ANOTHER PHASE COMPLETED ON REGISTRATION LAW

Congress has completed another phase of efforts to enact major modifications in federal lobby registration laws. But those involved say that final enactment of a bill still may be a long time away.

The House Judiciary Subcommittee on Administrative Law and Governmental Relations, chaired by Rep. Walter Flowers (D Ala.), completed five days of hearings on a number of lobbying bills Sept. 23. The staff of the Senate Government Operations Committee, which held three days of hearings in May, meanwhile is finishing the draft of a new bill to be introduced by Committee Chairman Abraham Ribicoff (D Conn.). *(Background, Weekly Report p. 1137)*

The 1946 Federal Regulation of Lobbying Act (Title III of the Legislative Reorganization Act of 1946—PL 79-601) has become a major target for criticism. The U.S. Supreme Court's 1954 decision *(U.S. v. Harriss)* upheld the constitutionality of the 1946 law, but narrowly limited its scope. As a result, the law has failed to provide much useful information about the extent of lobbying activities in Washington.

Organizations are required to register only if lobbying is their "principal purpose." As a result, some groups which do lobbying work do not register. Further, lobbyists who have registered need only report expenses incurred from direct contacts with members of Congress. Overhead expenses and major portions of lobbyists' salaries usually are unreported.

So-called "indirect" or "grassroots" lobbying campaigns—efforts aimed at representatives' constituents or an organization's membership—are exempt from reporting requirements as are contacts with the executive branch. And the secretary of the Senate and clerk of the House who collect the lobby reports have no power to enforce the law. *(Background on lobby law, 1974 Weekly Report p. 1947)*

Justice Department

The Justice Department's Criminal Division is supposed to be the enforcement agency for the lobby law but it only acts on complaints and only five cases have been referred to the department since 1972.

John Keeney, deputy assistant attorney general in charge of the Criminal Division, defended the department in testimony before the House administrative law subcommittee Sept. 12.

Keeney denied charges that the department had been less than vigorous in enforcing the law and said the enforcement problem was in the law itself. He cited uncertainty about the law's coverage and the fact that it provides only for criminal sanctions which were "clearly inappropriate for minor or unintentional violations." He noted that the department had gone to court to force employees of the National League of Cities-U.S. Conference of Mayors to register, and the government lost.

The secretary of the Senate and clerk of the House, he said, "have served merely as repositories of the records without any affirmative responsibility to investigate possible violations of the act or to refer conplaints to the Department of Justice. The Department of Justice is authorized to enforce the act's criminal sanctions, but lacks specific authority to monitor lobbying activities."

Keeney advised the subcommittee that the establishment of a monitoring agency was essential to an effective modification of the lobby law. He also urged that civil sanctions be included in a lobby bill along with any criminal penalties.

The Justice Department opposed any effort to give the monitoring agency civil or criminal enforcement powers, insisting that all litigation be carried out by the department, a view which was generally supported by the subcommittee members. Keeney also expressed some reservation about incorporating provisions governing lobbying of the executive branch in measures to change legislative lobbying regulations. The subcommittee was much less receptive to that idea.

House Hearings

Witnesses before the Flowers subcommittee almost unanimously agreed with Keeney's view that the 1946 law was inadequate and unenforceable. Only the American Civil Liberties Union in any way expressed the view that the statute might be adequate from its perspective, but it did not flatly oppose changes in the law.

Most of the members of the committee, including Chairman Flowers, criticized the existing law and supported changes. However, the witnesses differed widely as to the changes they supported and few committee members were very specific about their views either.

"I do not feel that the subcommittee should be wedded to any particular proposal or approach," Flowers said at the start of the hearings Sept. 11. And at the end of the hearings, his view was basically the same: "No one on the committee has closed his mind to any approach or point of view."

Railsback-Kastenmeier Bill

Nevertheless, the hearings tended to focus on HR 15, a measure backed by Common Cause, which had been introduced by Rep. Tom Railsback (R Ill.) and Rep. Robert W. Kastenmeier (D Wis.).

The bill would require anyone who receives or spends more than $250 in a quarter or $500 per year on lobbying to register. A lobbyist representing someone else would have to disclose whom he was representing and their financial arrangements. Lobbyists also would be required to identify the persons and agencies they contact, the policies they seek to influence and their salaries and expenses.

Enforcement power would reside with the Federal Elections Commission, and executive branch lobbying activities would be covered. All federal employees in grades GS-15 and above would have to log their contacts with outside parties. There was also a provision requiring voluntary

organizations to disclose the approximate number of their members, how their decisions to lobby were made and the identity of anyone who had contributed more than $100 in a quarter.

The bill was similar to S 815, introduced by Sen. Robert T. Stafford (R Vt.) and Sen. Edward M. Kennedy (D Mass.), which was the focus of the Senate committee hearings. However, the Railsback-Kastenmeier bill did not include S 815's "eight-contact" rule, which would include anyone who made eight separate oral communications with members or employees of Congress or the executive branch in the definition of "lobbyist."

The lack of agreement between the supporters of HR 15 and S 815 as to whether money, contacts or both constituted an aplpropriate trigger for registration requirements indicated the obstacles in the path of enacting a new law.

Basic Issues

The administrative law subcommittee has made no decisions on the basic issues of who should be required to register and how much information they should be required to disclose.

Flowers worried that excessive disclosure and reporting requirements might infringe upon First Amendment rights of free petition by discouraging individuals from making their views known to Congress. He also questioned the value of "accumulating a lot of useless data.... We need to concentrate on the real pressure points."

Senate Developments

Work on the Senate bill has focused on the same basic questions. An effort has been made to set aside certain areas—communications from constituents, for example—as clearly outside the reach of lobby laws and to limit the registration and reporting requirements.

Since the Senate hearings, two additional bills have been introduced—S 2068 by Sen. Lee Metcalf (D Mont.) and S 2167 by Sens. Edmund S. Muskie (D Maine) and Sen. Jacob K. Javits (R N.Y.).

The two bills would add to the framework of S 815 an expanded list of exempt activities and a narrowed list of information which must be reported.

Knowing When You See It

A couple of observations by Rep. Romano L. Mazzoli (D Ky.) during the House Judiciary administrative law subcommittee's hearings on lobby registration bills appeared to sum up the reaction of Mazzoli and his subcommittee colleagues to the testimony they had been hearing.

While questioning representatives of two Ralph Nader groups about the problem of defining lobbying, Mazzoli said the discussion reminded him of a Supreme Court justice's thoughts about obscenity: "I can't define it, but I know it when I see it."

After the AFL-CIO's chief lobbyist had sharply criticized one proposed bill, Mazzoli noted: "The first lesson I learned when I became a state legislator was that if the Chamber of Commerce and the AFL-CIO have the same position on a bill, you'd better be careful."

Sen. Metcalf excluded from his bill's definition of lobbying such activities as:

- Communications by an individual acting on his own behalf or expressing his own opinion.
- Any communication made at the request of a member, employee, or committee of Congress, and any appearance before, or written submission to, a committee.
- Any communication made to an executive agency at the agency's request.
- Activities by state or local officials acting in their official capacities, and activities of candidates for public office.
- Newspaper, magazine or broadcast editorials, news stories, and advertisements, with the exception of advertisements specifically soliciting lobbying activities.
- Communications from an attorney on behalf of his client in connection with a criminal prosecution or investigation.
- A request for information about the status, purpose or effect of a decision.

The Muskie-Javits bill has a similar list and both go far beyond the Stafford-Kennedy proposal which included only testimony before congressional committees, executive agencies; communications from government officials, political candidates, and political parties; and news papers, magazines, books and broadcasts.

Reporting Requirements

The Metcalf bill would not require a lobbyist to report the offices or officials he contacted, only the issues the lobbyist was involved in. There were also substantial changes in the voluntary organization requirements. Only persons who had contributed 5 per cent or more of an organization's lobbying budget would have to be identified and the agency administering the law would have the power to waive that requirement.

Senate aides who have been working on the issue say that there has been a long series of staff meetings since the May hearings to work out new language acceptable to the senators involved. The senators also have discussed the subject and the Government Operations Committee staff has spoken with the interest groups following the legislation.

The committee staff was trying to develop a bill that Sen. Ribicoff hopes to introduce with the co-sponsorship of a majority of the committee's members.

An aide to Sen. Stafford indicated that the senator was inclined to support a compromise plan, but that Stafford and Kennedy were pressing for the strongest possible compromise bill.

He said that Stafford considered it essential that the lobbying law require the identification of the organization or individual for whom lobbying is being done, the identification of the actual lobbyist, the identification of the issues on which the lobbying is taking place and the identification of the members of Congress who are being lobbied.

"These are essential to a good bill," the aide noted. He expressed concern that the committee was trying to eliminate requirements that the identity of the lawmakers being lobbied must be disclosed.

However, there was a willingness on the part of the proponents of a tough law, the aide added, to make changes designed to avoid inhibiting contacts from individuals, especially constituents. This has been a goal of Metcalf and Ribicoff.

Grassroots Compromise

A compromise appeared to be emerging on the issue of indirect lobbying. In a case where a national organization called upon its members to write their members of Congress, the local people would not be required to report, but the national organization would.

A Senate staff member said that such an arrangement did pose one problem—organizations could be set up in a state for the purpose of lobbying that state's senators and representatives without having to file reports. He warned that this provision would have to be written very carefully.

There also was agreement that the General Accounting Office probably ought to be the agency to administer the law. The Federal Elections Commission was regarded as being too tied up trying to get the new campaign finance act off the ground to take on an additional responsibility.

Disagreement remained on the key issues of executive branch lobbying and the extent of financial disclosure. Sen. Kennedy was pushing for retaining the executive branch regulations. He also was opposing suggestions that lobbyists be allowed to report only lump-sum expenditure figures rather than detailed breakdowns.

There appeared to be little support in the Senate or the House for any attempt to require senators and congressmen to keep logs of their contacts with lobbyists.

Several groups charged that it was irresponsible of Congress to place requirements on private organizations and individuals it was unprepared to place on itself. Rep. Railsback acknowledged the merit of the idea, but conceded to the House subcommittee that such a provision would kill any chance of a lobby bill passing the House.

Lobbyist Interest

"Obviously, a lot of people in this town are interested in this bill," a member of the Senate Government Operations Committee staff observed. Dick Clark, Common Cause's principal lobbyist on the lobby bill, took it a step further: "This is not a popular cause in this town."

At the House subcommittee hearings, Common Cause was the only major interest group to embrace the concept of a broadly inclusive registration law as exemplified by HR 15. The greatest hostility was expressed by the unlikely combination of the AFL-CIO, the U.S. Chamber of Commerce and the National Association of Manufacturers (NAM).

While the labor and business groups agreed that the 1946 law ought to be strengthened, they insisted that the pending proposals would result in excessive paperwork, were impractical, and would not result in an accurate picture of the patterns of influence in Congress or the executive branch.

NAM and the chamber also focused on the attempts to deal with indirect lobbying, saying it would be impossible to distinguish between indirect lobbying activities and normal communications with their members.

Stanley Kaleczyc Jr., assistant general counsel of the chamber, pointed out that the organization sent out a regular newsletter. "Sometimes we tell members to write their congressmen about a piece of legislation, sometimes we just talk about the legislation. Where's the dividing line?"

Andrew J. Biemiller, the AFL-CIO's chief lobbyist, focused on the issue of logging meetings and phone calls. He said an organization which was involved in as many issues

Listing Contacts

Following is a list of the contacts made by AFL-CIO lobbyist Ken Young May 13, 1975. Young's boss, Andrew J. Biemiller, Sept. 23 submitted the list to the House administrative law subcommittee as evidence of how proposed requirements that lobbyists log their contacts would be overly burdensome.

Capitol Hill

1. Legislative Assistant to Senator on proposed amendment to FLSA: (1) phone call and (2) meeting on issue.
2. Senator on Weicker amendment to ACA and cloture vote.
3. Senate aide on cloture vote and timing (ACA).
4. Congressman on AFL-CIO position budget conference report.
5. House aide on farm bill veto.
6. Senate subcommittee staff on pending manpower legislation.
7. House Education and Labor staff on public service employment legislation.
8. Senate budget staff on AFL-CIO position on conference.
9. House aide on Emergency Jobs Appropriations conference report.
10. DSG for position on budget resolution.
11. House leadership staff on budget resolution.
12. Senator on strip mining bill possible veto.
13. Senate committee staff on energy bill reported by Commerce Committee.
14. Senate aide on problems of Accelerated Public Works and counter-cyclical revenue sharing.
15. House Democratic Policy Committee staff on legislation to consider before recess (2 calls).
16. Senator—Foreign policy discussion when given ride to AFL-CIO during storm.
17. Calls to three congressional offices on Farm Bill veto.

Outside Groups

1. NFO-farm bill veto.
2. legal service lawyers—AFL-CIO position on nominees to Legal Service Corp.
3. Consumer Federation of America—ACA cloture vote: 2 calls and 1 meeting.
4. Consumer Federation of America—farm bill veto.
5. Business Organization—call to determine AFL-CIO position on lobbying bill.
6. Congress Watch—oil price amendment in House Subcommittee (3 calls).
7. Congress Watch—ACA.
8. Common Cause—House legislation schedule for next week.

Unions

1. AFGE—budget conference report.
2. Steel—oil price amendment in House Subcommittee.
3. AFT—legislation on education for handicapped.
4. Monday meeting—ACA (1) Weicker amendment (2) cloture; oil price amendment in House Subcommittee.

as the AFL-CIO would find HR 15's record-keeping requirements to be a serious burden. *(Box, p. 2067)*

Common Cause also received little comfort from the testimony of various "public interest" and environmental lobby groups.

While these organizations were much more favorable toward new lobby registration laws than were the business and labor lobbyists, they had specific problems with the HR 15 approach.

Rhode Island Gov. Philip W. Noel (D), the chairman of the National Governors Conference, supported the bill in testimony Sept. 19. But he said the conference was opposed to provisions requiring its staff to register.

Alan Morrison and Joan Claybrook, testifying on behalf of Ralph Nader's Public Citizen and Congress Watch operations Sept. 18 objected to the paperwork burdens. They also opposed any requirement that the membership lists of, or the identity of contributors to, voluntary organizations be disclosed. They warned that such a requirement would be a violation of civil liberties and would discourage participation in controversial organizations.

Environmental groups had similar reservations. They also expressed the fear that if required to register as lobbyists, their tax-exempt status might be threatened. The extent to which such organizations can lobby without losing their tax-exempt status never has been clearly determined. Environmental and public interest groups also worried that executive branch logging requirements could cut off their access to federal agencies.

Clash With Flowers

The House hearings were enlivened by a clash between Rep. Flowers and Fred Wertheimer, Common Cause's vice president for operations, who testified for the organization Sept. 18.

Flowers observed that neither Common Cause Chairman John W. Gardner nor its president, David Cohen, was testifying. Wertheimer said Cohen was out of town and Gardner was out of the country, both honoring prior commitments. Flowers noted that Gardner had termed the failure of the subcommittee to hold hearings earlier in the year "unconscionable" and that Cohen had attacked Flowers in a speech in Alabama. "If this is a top priority matter, why aren't they here?" Flowers asked.

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>
> —Rep. Tom Railsback (R Ill.)

A Common Cause spokesman said later the organization had felt Flowers was not meeting promised timetables and Common Cause decided that public pressure was required. "Flowers isn't used to that sort of pressure," he said.

A member of the subcommittee staff said in response that there had been no delay and that the committee had been working as fast as it could given limited staff.

Both Rep. Railsback and Rep. Kastenmeier made a point of disassociating themselves from criticism of Flowers. "If ever legislation needed to be handled with precision and care, this is it," Railsback said. "The 1946 law was a failure because it was poorly drafted and was approved in haste."

Rep. Walter Flowers

Sen. Abraham Ribicoff

Internal Pressures

Notwithstanding the blasts at Common Cause, modification of the lobby laws has significant support. 15 has 155 cosponsors, and there is substantial pressure both houses of Congress for a new law.

Given current polls showing public disenchantment with politics and politicians, and given the lingering memories of Watergate, there appears to be a widespread view among senators and representatives that further steps must be taken to restore public confidence.

"No one knows that a new law is needed better than members themselves," a Senate aide observed. There is also the practical consideration that a failure to support tough lobby-registration laws could be used against a member in a re-election campaign.

Outlook

A key to the outcome of the issue is the amount of support Sen. Ribicoff can muster for his compromise. The issue is sufficiently complex that the general agreement on the inadequacy of the 1946 law does not prove much. In addition to the wide range of special interests challenged, there are important political and constitutional questions involved in the debate. There is also the technical problem of drafting language sufficiently precise to avoid a repeat of the *Harriss* decision.

The Government Operations Committee's plans to hold another round of hearings on the new bill. By the most optimistic forecast, the legislation will not reach the floor stage until the end of October at the earliest.

House

In the House, Rep. Flowers says he wants to move ahead on the bill as fast as possible. But he observes that the subcommittee currently "is all over the place" on the issue. "We have to sit down and decide where we want to go."

The subcommittee appears to be leaning toward the idea of writing a clean bill which could take several weeks. There also could be more hearings. Agreement on the Ribicoff compromise bill in the Senate could speed the process. But no one on the subcommittee was predicting quick action on the matter in the House.

A jurisdictional dispute is possible between Judiciary and the House Ethics Committee, which has a number of bills before it, including one (HR 1112) favored by the U.S. Chamber of Commerce. The ethics panel has scheduled no hearings on its legislation.

—By A.